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7 BEATRICE CEJA, et al.,
8 Plaintiffs,
9 v.
10
11 MOBILE PRODUCTS, INC.,
Defendant.

Case No. 24-cv-07767-LJC

**ORDER GRANTING MOTION TO
REMAND**

Re: Dkt. No. 21

12 Before the Court is Plaintiffs' Motion to Remand. ECF No. 21. Plaintiffs filed suit against
13 the City and County of San Francisco and the State of California in San Francisco Superior Court
14 in April 2021. They subsequently named Mobile Products, Incorporated as an additional
15 defendant. Mobile Products, Incorporated removed the case to federal court in November 2024.
16 Plaintiffs seek to remand the action, claiming that the removal was improper and untimely. The
17 parties have consented to the jurisdiction of a magistrate judge. The matter is fully briefed and
18 suitable for decision without oral argument. Civil L.R. 7-1(b). Having considered the papers
19 submitted by the parties and the relevant legal authority, the Court hereby GRANTS Plaintiffs'
20 Motion to Remand. Plaintiffs' requests for attorneys' fees and costs and sanctions are DENIED.

21 **I. BACKGROUND**

22 Plaintiffs Beatrice Ceja, Alexis Pelayo, Armani Pelayo, Esmerelda Pelayo, and Emmanuel
23 Ceja, all California citizens, are the decedents of Eduardo Pelayo. ECF No. 1-1 at 4 ¶¶ 3-4
24 (Exh. A, Compl.). Prior to his death, Eduardo Pelayo worked for a general contractor, K.J. Woods
25 Construction. *Id.* ¶ 7. The State of California's (State) Public Utilities Commission engaged the
26 City and County of San Francisco's (City) Department of Public Works to install a "water main in
27 the Twin Peaks neighborhood" of San Francisco (Construction Site). *Id.* ¶ 6. The City, in turn,
28 retained K.J. Woods Construction to carry out the installation of the water main, although

1 Plaintiffs allege that the City “managed and controlled” the project. *Id.* ¶¶ 7, 8. On February 4,
2 2020, Mr. Pelayo was operating a large street sweeper during the course of his work at the
3 Construction Site. *Id.* ¶ 8. The street sweeper overturned while Mr. Pelayo was riding on it, killing
4 him. *Id.* ¶ 13.

5 Defendant Mobile Products, Incorporated (MPI) is the entity responsible for the design,
6 manufacturing, and distribution of the street sweeper. ECF No. 21 at 2. MPI is a “Kansas
7 corporation and has its principal place of business in Texas.” ECF No. 1 ¶ 45.

8 **II. PROCEDURAL HISTORY**

9 Plaintiffs filed suit in San Francisco Superior Court, initially asserting claims for wrongful
10 death resulting from negligence against the State and the City. Compl. ¶¶ 9-12. Plaintiffs filed
11 their initial complaint on April 1, 2021¹ and filed an amended complaint in June 2021. ECF No. 1-
12 1 at 12 (Exh. B, First Am. Compl.); Compl. at 1. The City answered and filed a cross-complaint
13 against the general contractor, K.J. Woods Construction, on August 6, 2021, asserting that the
14 general contractor was liable for Mr. Pelayo’s death. ECF No. 1-1 at 19 (Exh. C, Answer), 31
15 (Exh. D, Cross-Compl.). Plaintiffs dismissed their claims against the State in January 2022. ECF
16 No. 1-2 at 16 (Exh. F, Dismissal of State of California). Plaintiffs and the City exchanged written
17 discovery. The City propounded written discovery on Plaintiffs in September 2021, which
18 Plaintiffs responded to in January 2022, and the parties met and conferred about the sufficiency of
19 Plaintiffs’ responses. ECF No. 4-1 at 9 ¶¶ 3-9 (Exh. L, Seltzer Decl. in Support of City’s Motion
20 for Summary Judgment). Plaintiffs propounded Form Interrogatories, Special Interrogatories,
21 Requests for Production of Documents, and Requests for Admissions on the City in April 2022.
22 ECF No. 8-1 at 9 (Exh. O, City’s Opp. to Plaintiffs’ Request to Continue Hearing on Motions for
23 Summary Judgment). The City responded and produced 520 responsive documents in July 2022.
24 *Id.* at 10.

25 Plaintiffs filed two Doe amendments on April 7, 2022, naming LayMor, Inc. (LayMor)
26 and Rev Group, Inc. (Rev Group) as additional defendants. ECF No. 21-1 (Haley Decl.) ¶ 3.

27
28 ¹ Plaintiffs and MPI both state that the initial complaint was filed on April 21, 2021. ECF Nos. 21
at 3; 22 at 8. This is incorrect. *See* Compl. at 1.

1 Plaintiffs' counsel attests that at the time the Doe amendments were filed, he believed LayMor and
2 Rev Group were responsible for the design, manufacturing, and distribution of the street
3 sweeper. *Id.*

4 Plaintiffs served LayMor on April 15, 2022. ECF No. 1-2 at 23-24 (Exh. H, Proof of
5 Service). It is unclear when Plaintiffs served Rev Group. *See id.* at 26-33 (Exh. I, Orders to Show
6 Cause for Plaintiffs' Failure to File Proof of Service on Rev Group); ECF No. 7-3 at 54. In
7 February 2023, counsel for MPI contacted Plaintiffs' counsel, "informing Plaintiffs, in part, that
8 Rev Group, Inc. and Lay Mor, Inc. are not the appropriate parties responsible for the
9 design/manufacture/distribution of the subject machine and the more proper entity to be named
10 was Mobile Products, Inc." ECF No. 21-1 (Haley Decl.) ¶ 4. Plaintiffs and MPI stipulated that
11 Plaintiffs would dismiss LayMor and Rev Group from the action and MPI would file an answer to
12 Plaintiffs' Amended Complaint. *Id.* ¶ 5. MPI filed their answer in April 2023, and Plaintiffs
13 subsequently dismissed their claims against LayMor and Rev Group. *See* ECF No. 1-2 at 35 (Exh.
14 J, MPI's Answer), 46-51 (Exh. K, Dismissals of LayMor and Rev Group). MPI and Plaintiffs met
15 and conferred about the sufficiency of Plaintiffs' claims against MPI, and MPI requested that
16 Plaintiffs either dismiss it from the action or further amend their Amended Complaint "to allege
17 sufficient facts supporting a claim of negligence against MPI." ECF No. 22-1 at 8.

18 After Plaintiffs dismissed the claims against LayMor and Rev Group in June 2023, the
19 only remaining defendants were MPI (a citizen of Kansas and Texas) and the City. The City filed
20 motions for summary judgment against each Plaintiff on June 8, 2023, with the hearings set for
21 August 25, 2023. ECF No. 1 ¶ 14; *see* ECF No. 4-1 (Exh. L, City's Motions for Summary
22 Judgment).

23 Meanwhile, as a result of ongoing meet and confer efforts between Plaintiffs and MPI,
24 Plaintiffs agreed to file "an amended complaint to clarify the allegations" against MPI to forestall
25 MPI from filing a motion for judgment on the pleadings. ECF No. 22-1 at 11. Plaintiffs provided
26 MPI with a copy of their Second Amended Complaint in June 2023; however, MPI refused to
27 stipulate to the filing of the Second Amended Complaint, claiming that Plaintiffs improperly
28 "changed the case" and alleged new facts and causes of action. *Id.* at 15. Plaintiffs then filed a

1 motion for leave to file their Second Amended Complaint and requested that the hearing on the
2 City's motions for summary judgment be continued until after the court ruled on their request to
3 amend their Complaint. *Id.* ¶¶ 10-11; ECF No. 7-3 at 2 (Exh. M, Plaintiffs' Motion for Leave to
4 File Second Am. Compl.); ECF No. 8-1 at 2 (Exh. N, Plaintiffs' Request to Continue Hearing on
5 the City's Motions for Summary Judgment). The court continued the City's motions for summary
6 judgment on August 25, 2023, and Plaintiffs filed an opposition to the City's motions. ECF Nos.
7 21-1 (Haley Decl.) ¶ 11; 21-2 at 2.

8 The state court subsequently granted Plaintiffs' request to file the Second Amended
9 Complaint, which Plaintiffs filed on November 27, 2023. ECF No. 1 ¶¶ 17-18. The City's motions
10 for summary judgment against Plaintiffs' First Amended Complaint were taken off calendar as
11 they had been superseded by Plaintiffs' Second Amended Complaint. *Id.* ¶ 22. The parties
12 continued to litigate the case in state court: MPI repeatedly demurred to Plaintiffs' Second
13 Amended Complaint, MPI moved to compel Plaintiffs to produce discovery responses, and the
14 City filed a motion to continue the trial date.²

15 The City filed their second round of motions for summary judgment against Plaintiffs in
16 July 2024. ECF No. 1 ¶ 22. Plaintiffs filed a statement of non-opposition, which states, "Plaintiffs,
17 and each of them, shall not oppose Defendant City of San Francisco's Motions for Summary
18 Judgment." *Id.* ¶ 23; ECF No. 11-1 at 2 (Exh. V, Plaintiffs' Statement of Non-Opposition). The
19 state court granted the City's motions on October 8, 2024, leaving MPI as the only remaining
20 defendant. ECF No. 11-1 at 7 (Exh. W, Order). MPI removed the case on November 7, 2024 as,
21 with the City dismissed from the action, there was complete diversity between MPI and Plaintiffs.
22 See ECF No. 1. Plaintiffs filed the instant motion a month later. ECF No. 21.

23 III. LEGAL STANDARD

24 To resolve Plaintiffs' Motion to Remand, the Court must determine if removal was

25 _____
26 ² The Court takes judicial notice of the existence of filings on the state court docket in *Ceja v. The*
27 *City and County of San Francisco*, CGC-21-590531. See *Reyna's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other
28 matters of public record.") Taking judicial notice *sua sponte* is permissible. Fed. R. Evid. 201(c)(1).

1 improper. “A motion to remand is the proper procedure for challenging removal.” *Moore-Thomas*
2 *v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009). Grounds for remand include either
3 lack of subject matter jurisdiction or a procedural defect in the notice of removal. *See, e.g., Smith*
4 *v. Mylan Inc.*, 761 F.3d 1042, 1044 (9th Cir. 2014); *Maniar v. F.D.I.C.*, 979 F.2d 782, 784–85 (9th
5 Cir. 1992) (citing 28 U.S.C. § 1447(c)).

6 A defendant sued in state court may remove the case to federal court if the case could have
7 been brought in the first instance in a United States district court. 28 U.S.C. § 1441(a) (authorizing
8 removal of any civil state action where “original jurisdiction” lies with a federal district court).
9 “The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28 U.S.C.
10 §§ 1331 and 1332”, which address federal question and diversity jurisdiction, respectively.
11 *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 513 (2006). As this action invokes diversity jurisdiction,
12 the relevant provision, Section 1332, provides that “[t]he district courts shall have original
13 jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of
14 \$75,000 [and the action] is between . . . citizens of different States[.]” 28 U.S.C. § 1332(a).

15 With regard to the procedure for removing a state action to a U.S. district court, timing is
16 important. In general, the removing party must file their notice of removal “within 30 days after
17 the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting
18 forth the claim for relief upon which such action or proceeding is based, or within 30 days after
19 the service of summons upon the defendant.” *Id.* § 1446(b)(1). The timeframe for removal may
20 start later only if “the initial pleading is not removable.” *Id.* § 1446(b)(3). Then, a notice of
21 removal may be filed within thirty days of the defendant receiving “a copy of an amended
22 pleading, motion, order or other paper from which it may first be ascertained that the case is one
23 which is or has become removable.” *Id.*

24 “A case may not be removed under subsection [1446](b)(3) on the basis of jurisdiction
25 conferred by section 1332 [diversity jurisdiction] more than 1 year after commencement of the
26 action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a
27 defendant from removing the action.” 28 U.S.C. § 1446(c). That is, removing a case more than one
28 year after the action was commenced is proper only where the plaintiff acted in bad faith to

1 prevent removal. *Id.* Furthermore, a case may only be removed from state court pursuant to
2 subsection 1446(b)(3) if the case became removable through a “voluntary act of the plaintiff.” *Self*
3 *v. Gen. Motors Corp.*, 588 F.2d 655, 657 (9th Cir. 1978).

4 In general, there is a “strong presumption against removal jurisdiction,” and as a result,
5 “the defendant always has the burden of establishing that removal is proper[.]” *Hunter v. Philip*
6 *Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (internal quotation marks omitted), *but see, Dart*
7 *Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (holding that there is no
8 presumption against removal pursuant to the Class Action Fairness Act.). The Ninth Circuit
9 “strictly construe[s] the removal statute against removal jurisdiction;” accordingly, “federal
10 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”
11 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (internal quotation marks and citations
12 omitted), *overruled on other grounds by Dart Cherokee Basin*, 574 U.S. at 87-89. Whether
13 removal was proper is determined primarily on the basis of the pleadings at the time of removal.
14 *Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998).
15 However, the courts may also consider affidavits or other “summary-judgment-type evidence”
16 submitted after a motion to remand is filed. *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373,
17 377 (9th Cir. 1997); *Altamiro v. Shaw Indus., Inc.*, No. 13-00939, 2013 WL 2950600, at *3 (N.D.
18 Cal. June 14, 2013) (“A court may properly consider evidence the removing party submits in its
19 opposition to remand, even if this evidence was not submitted with the original removal
20 petition.”).

21 **IV. ANALYSIS**

22 **A. Bad Faith**

23 Plaintiffs concede that the amount in controversy is over \$75,000 and there is complete
24 diversity between them and MPI, but contend that MPI has not demonstrated that removing the
25 case more than a year after it commenced is permissible under subsection 1446(c). Plaintiffs filed
26 the action in state court in April 2021; MPI removed the case in November 2024, claiming that the
27 case first became removable in October 2024 when the City, the last non-diverse defendant, was
28 dismissed from the action. *See* ECF No. 1. As noted above, under subsection 1446(c), removing a

1 case more than one year after it commenced is only permitted where the plaintiff “acted in bad
2 faith in order to prevent a defendant from removing the action” earlier. It is MPI’s burden to
3 demonstrate bad faith. *See Weber v. Ritz-Carlton Hotel Co., L.L.C.*, No. 4:18-CV-03351, 2018
4 WL 4491210, at *3 (N.D. Cal. Sept. 19, 2018) (“The removing party bears the burden of
5 demonstrating that the plaintiff has acted in bad faith, particularly given the strong presumption
6 against removal.”). Plaintiffs argue that MPI has not shown that that they acted in bad faith. The
7 Court agrees.

8 The Ninth Circuit has not established a clear test for determining what constitutes “bad
9 faith” under 28 U.S.C. § 1446(c). *See Christensen L. Offs., LLC v. Christensen*, No. 21-15887,
10 2022 WL 777217, at *2 (9th Cir. Mar. 14, 2022) (“We have yet to define this standard”).
11 However, courts in the circuit generally assess “whether the plaintiff engaged in strategic
12 gamesmanship designed to keep the case in state court until the one-year deadline has expired[,]”
13 considering “the timing of naming and dismissing the non-diverse defendant, the explanation
14 given for dismissal, and whether the plaintiff actively litigated the case in ‘any capacity’ against a
15 non-diverse defendant before dismissal.” *Torres v. Honeywell, Inc.*, No. 20-CV-10879, 2021 WL
16 259439, at *3 (C.D. Cal. Jan. 25, 2021) (citing *Heacock v. Rolling Frito-Lay Sales, LP*, No. C16-
17 0829, 2016 WL 4009849, at *3 (W.D. Wash. July 27, 2016)). This is consistent with the Ninth
18 Circuit’s “strong presumption against removal jurisdiction.” *Id.* at *2 (citing *Geographic
19 Expeditions, Inc. v. Est. of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010)).

20 MPI has not demonstrated that Plaintiffs “engaged in strategic gamesmanship to keep the
21 case in state court until the one-year deadline [for removal] expired.” *Torres v. Honeywell*, 2021
22 WL 259439, at *3; *see* 28 U.S.C. § 1446(c). First, when Plaintiffs named the City and when the
23 City was dismissed from the action do not indicate bad faith. Plaintiffs “named and served” the
24 City at “the outset of the case[.]” ECF No. 21 at 8; *see NKD Diversified Enterprises, Inc. v. First
25 Mercury Ins. Co.*, No. 1:14-CV-00183, 2014 WL 1671659, at *4 (E.D. Cal. Apr. 28, 2014),
26 *recommendation adopted*, 2014 WL 2619599 (E.D. Cal. June 6, 2014) (finding no indication of
27 bad faith where the plaintiff “originally named a defendant against who they had a valid cause of
28 action at the commencement of the action”). The City was dismissed from this action nearly two

1 and a half years after the deadline for removal had passed and three and a half years after the
2 action commenced. MPI, quoting *Jones v. Ramos Trinidad*, 380 F. Supp. 3d 516, 520-21 (E.D. La.
3 2019), argues, “Strict application of the one-year limit would encourage plaintiffs to join
4 nondiverse defendants for 366 days simply to avoid federal court[.]” ECF No. 22. While
5 dismissing a non-diverse defendant shortly after the deadline for removal may support a showing
6 of bad faith,³ it does not follow that not opposing the dismissal of a non-diverse defendant years
7 after the deadline for removal shows bad faith.

8 MPI argues that the timing of the City’s dismissal demonstrates bad faith because Plaintiffs
9 should have dismissed their claims against the City in June 2023 after the City filed its first round
10 of motions for summary judgment.⁴ ECF No. 22 at 16. This argument is unavailing as well. It is
11 true that Plaintiffs sought and obtained a continuance of the hearings on the City’s June 2023
12 motions for summary judgment, and this created some delay in the litigation against the City and
13 the City’s ultimate dismissal. Yet, this conduct does not raise concerns about dilatory tactics. At
14 the time, Plaintiffs’ request to amend their complaint was pending, and they asked the Superior
15 Court to resolve that request first before the motions for summary judgment advanced.
16 Furthermore, Plaintiffs sought the continuances well after the one-year deadline for removability
17 had lapsed. Even if Plaintiffs realized that the City would likely prevail on their motions when
18 Plaintiffs first received the motions in June 2023, and then intentionally delayed the court from
19 ruling on the motions until October 2024, such a delay could not have been motivated by
20 Plaintiffs’ efforts to “keep the case in state court until the one-year deadline [for removal had]
21 expired[,]” as the deadline had already passed. *Torres v. Honeywell, Inc.*, 2021 WL 259439, at *3;
22 28 U.S.C. § 1446(c); *see* ECF No. 22 at 16.

23 ³ But does not necessarily do so. See *Ramirez v. Samsung Elecs. Am., Inc.*, No. CV195305, 2019
24 WL 4033935, at *2 (C.D. Cal. Aug. 26, 2019) (finding “the mere fact that plaintiff assented to
25 dismissal” of the non-diverse defendant twelve days after the deadline for removal did “not
26 establish plaintiff’s bad faith.”); *Stroman v. State Farm Fire & Cas. Co.*, 2019 WL 1760588, *3
(W.D. Wash. 2019) (“[T]he dismissal of [non-diverse defendant] one year and two days after the
27 commencement of the state court action, by itself, does not establish Plaintiffs’ alleged bad faith in
28 preventing removal[.]”).

27 ⁴ Notably, MPI does not claim that Plaintiffs engaged in dilatory conduct or prevented the City
28 from moving for summary judgment prior to April 2022, which conceivably could have supported
its argument that Plaintiffs engaged in such conduct in order to prevent removal before the one-
year deadline.

1 Second, Plaintiffs offer legitimate reasons for not opposing the City’s motions for
2 summary judgment. *See Torres v. Honeywell, Inc.*, 2021 WL 259439, at *3 (“[C]ourts have
3 considered [...] the explanation given for dismissal” of the non-diverse defendant in determining
4 bad faith). Plaintiffs explain that although they believed their claims against the City “had
5 sufficient merit,” they ultimately decided that they “would be unable to overcome” the City’s
6 argument the independent contractor the City hired, rather than the City itself, was liable for Mr.
7 Pelayo’s death. ECF No. 23 (Reply Brief) at 7. Furthermore, during the course of litigation,
8 Plaintiffs “obtained information [...] which indicated that the party ultimately responsible for the
9 subject incident was MPI” rather than the City or the independent contractor. *Id.* Plaintiffs’
10 decision appears motivated by reasonable legal strategy, not bad faith. *See Torres v. Honeywell,*
11 *Inc.*, 2021 WL 259439, at *3 (finding the plaintiff’s decision to dismiss a defendant after learning
12 more information about the defendant’s “involvement in the accident” was “reasonable”); *Craig v.*
13 *Universum Commc’ns, Inc.*, No. 20-cv-01284, 2020 WL 4590597, at *5 (N.D. Cal. Aug. 11, 2020)
14 (crediting the plaintiff’s explanation that it took “time and research to determine” the proper
15 defendant); *Ramirez v. Samsung Elecs. Am.*, 2019 WL 4033935, at *2 (finding that plaintiff
16 consenting to the dismissal of the non-diverse defendant after “discovery revealed that [the non-
17 diverse defendant] was not involved in the design, manufacture, or distribution of the” product at
18 issue in the case was reasonable).

19 Third, the record shows that Plaintiffs actively litigated the case against the City. *See*
20 *Weber v. Ritz-Carlton Hotel Co., L.L.C.*, No. 18-cv-03351, 2018 WL 4491210, at *4 (N.D. Cal.
21 Sept. 19, 2018) (explaining that active litigation against a non-diverse defendant establishes a
22 rebuttable presumption of good faith). Plaintiffs exchanged discovery with the City. *See id.*
23 (“[A]ctive litigation can be determined by whether a plaintiff asserts valid claims, takes discovery,
24 and negotiates settlement, among other things.”) The City propounded written discovery on
25 Plaintiffs in September 2021, the parties met and conferred about the sufficiency of Plaintiffs’
26 responses, and Plaintiffs provided multiple rounds of amended responses. ECF No. 4-1 at 9, ¶¶ 3-
27 9. (Exh. L, Seltzer Decl. in Support of City’s Motion for Summary Judgment). Plaintiffs
28 propounded an initial set of interrogatories, document requests, and requests for admission in

1 April 2022. ECF Nos. 21 at 10; 8-1 at 9 (Exh. O, City’s Opp. to Plaintiffs’ Request to Continue
2 Hearing on Motions for Summary Judgment). The City responded and produced 520 responsive
3 documents in July 2022. ECF No. 8-1 at 10. Although MPI argues that such “limited written
4 discovery” is insufficient to show active litigation, this position is inconsistent with the “high
5 threshold” MPI must meet to show bad faith. ECF No. 22 at 16; *see NKD Diversified v. First*
6 *Mercury*, 2014 WL 1671659, at *3, *5 (finding that plaintiffs propounding “basic discovery
7 requests at the outset of the case”—one set of document requests, one set of interrogatories, and
8 noticing but not taking one deposition—supported their argument that they actively litigated their
9 claim against the non-diverse defendants). Moreover, Plaintiffs sought and obtained a continuance
10 of the hearings on the City’s June 2023 motions for summary judgment, eventually opposed the
11 initial motions for summary judgment, and appeared to “cooperate[] and negotiate” with the City
12 by stipulating to the City’s request to continue the trial date. *Torres v. Honeywell, Inc.*, 2021 WL
13 259439, at *3; *See Ramirez v. Samsung Elecs.*, 2019 WL 4033935, at *3 (finding that plaintiff
14 seeking a continuance and unsuccessfully opposing a motion for summary judgment evidenced
15 active litigation). The fact that Plaintiffs actively litigated the case against the City establishes
16 good faith.

17 MPI raises additional arguments in its Opposition to support its claim that Plaintiffs
18 engaged in “strategic gamesmanship designed to keep the case in state court until the one-year
19 deadline has expired.” *Torres v. Honeywell, Inc.*, 2021 WL 259439, at *3; ECF No. 22 at 17. MPI
20 argues that Plaintiffs naming LayMor and Rev Group one year after filing suit and naming MPI
21 two years after shows bad faith. But Plaintiffs belatedly naming LayMor, Rev Group, and MPI is
22 not sufficient to establish removability: had Plaintiffs named them all at the outset of the case,
23 before the one-year cutoff for removal, the case would not have been removable as the City, the
24 non-diverse defendant, was at that time a party to the case. Moreover, MPI has not shown that
25 Plaintiffs intentionally delayed adding LayMor, Rev Group, or MPI. MPI alleges that Plaintiffs
26 amended their complaint to name LayMor and Rev Group on April 7, 2022, shortly after the one-
27 year cutoff. ECF No. 1 ¶ 9. Though MPI bears the burden of demonstrating that this action is
28 removable, *Hunter*, 582 F.3d at 1042, it has not put forth any arguments or evidence

1 demonstrating that Plaintiffs should or could have named LayMor and Rev Group earlier.
2 Similarly, the record shows that MPI first informed Plaintiffs that it, rather than LayMor or Rev
3 Group, was the party responsible for the design, manufacture, and distribution of the street
4 sweeper in February 2023. ECF No. 21-1 (Haley Decl.) ¶ 4. MPI has not demonstrated that
5 Plaintiffs knew this before February 2023 but intentionally delayed naming MPI.

6 In *Craig v. Universum Communications*, Judge Gilliam commented:

7 The Court understands Defendant's frustration that it was not included
8 in this action until after the case had been pending in state court for
9 over a year. However, Plaintiff has explained, both here and to the
state court, that it took time and research to determine the true name
of Defendant[.]

10 2020 WL 4590597, at *5. Similarly here, it apparently "took time" for Plaintiffs to ascertain the
11 appropriate defendant. ECF No. 21-1 (Haley Decl.) ¶¶ 3-4 ("Plaintiffs named [LayMor and Rev
12 Group] based on the reasonable belief that they were responsible for the design, manufacture, and
13 distribution of the subject LayMore Sweeper [...Eleven months later,] defendant Mobile Products
14 sent Plaintiffs an email informing Plaintiffs, in part, that Rev Group, Inc. and Lay Mor, Inc. are
15 not the appropriate parties responsible" (cleaned up); ECF No. 23 (Reply Brief) at 7 (explaining
16 that during the course of litigation, Plaintiffs "obtained information [...] which indicated that the
17 party ultimately responsible for the subject incident was MPI"). This does not establish bad faith.

18 MPI next argues that Plaintiffs' significant changes in their Second Amended Complaint
19 demonstrate bad faith. ECF No. 22 at 17. In May 2023, MPI requested that Plaintiffs amend their
20 Complaint to "clarify allegations against MPI[,"] and then objected to the extent of Plaintiffs'
21 amendments. *Id.* Plaintiffs sought and were granted leave to file a Second Amended Complaint,
22 which asserted new claims for product liability against MPI in addition to negligence claims
23 against MPI and the City. *Id.* MPI argues that "Plaintiffs' intention was to direct the new
24 complaint specifically to MPI only [...Plaintiffs] altered the complaint in drastic manners in
25 preparation for the Court granting City's motion for summary judgment." *Id.* at 17-18. As with
26 MPI's argument that Plaintiffs unnecessarily delayed the state court from ruling on the City's June
27 2023 motions for summary judgment, discussed *supra*, this argument has a timing problem. The
28 deadline for removal passed in April 2022. Plaintiffs filed their request for leave to file their

1 Second Amended Complaint in August 2023. ECF No. 1 ¶ 15. As the case was no longer
2 removable when Plaintiffs amended their Complaint, such amendment could not have been
3 motivated by Plaintiffs' desire "to prevent" removal. ECF No. 22 at 17; 28 U.S.C. § 1446(c)(1).
4 Moreover, as MPI acknowledges, Plaintiffs have a good faith explanation for filing the Second
5 Amended Complaint: they anticipated the state court would grant "City's motion for summary
6 judgment" and amended their Complaint accordingly in light of their belief that MPI was "the
7 party ultimately responsible for the subject incident." ECF Nos. 22 at 17; 23 at 7. The Court
8 accordingly finds that MPI has not demonstrated Plaintiffs "acted in bad faith in order to prevent"
9 removal. 28 U.S.C. § 1446(c)(1). As more than one year elapsed between commencement of the
10 action and removal, removal was improper, and Plaintiffs' Motion for Remand is GRANTED.
11 This matter shall be remanded to the San Francisco Superior Court.

12 **B. Voluntary-Involuntary Rule**

13 In addition to arguing that removal was improper because MPI did not demonstrate bad
14 faith, Plaintiffs argue that removal was improper under the voluntary-involuntary rule. ECF No.
15 21 at 6. "The 'voluntary-involuntary' rule provides that a suit which, at the time of filing, could
16 not have been brought in federal court must remain in state court unless a voluntary act of the
17 plaintiff brings about a change that renders the case removable." *People of State of Cal. by &*
18 *Through Lungren v. Keating*, 986 F.2d 346, 348 (9th Cir. 1993). Plaintiffs contend that the case
19 became removable because the state court granted the City's motions for summary judgment, not
20 through a "voluntary act" by Plaintiffs. ECF No. 21 at 6. MPI argues that Plaintiffs' act of filing a
21 statement of non-opposition to the motions for summary judgment constitutes a "voluntary act"
22 and is the analytical equivalent to Plaintiffs voluntarily dismissing the City from the action. ECF
23 No. 22 at 13.

24 As MPI's failure to demonstrate that Plaintiffs acted with bad faith is dispositive, the Court
25 need not, and accordingly does not, reach the voluntary-involuntary issue. *See Midbrook*
26 *Flowerbulbs Holland B.V. v. Holland Am. Bulb Farms, Inc.*, 874 F.3d 604, 617 (9th Cir. 2017)
27 ("The 'cardinal principle of judicial restraint' is that 'if it is not necessary to decide more, it is
28 necessary not to decide more.'") (quoting *PDK Labs. Inc. v. U.S. D.E.A.*, 362 F.3d 786, 799 (D.C.

1 Cir. 2004) (Roberts, J., concurring in part and concurring in judgment)). To the extent that it is
2 relevant to Plaintiffs' request for attorneys' fees and sanctions, discussed below, the Court notes
3 that there does not appear to be consensus on whether a plaintiff informing the court that they do
4 not oppose dismissal of the last non-diverse party is a voluntary or involuntary act. *See, e.g.*,
5 *Shemp v. Yamaha Corp. of Am.*, No. 06-CV-00565, 2006 WL 2669185, at *3 (D. Nev. Sept. 18,
6 2006) (finding that, where plaintiff did not inform the court of his non-opposition, his "failure to
7 file an opposition to [the defendant's] motion to dismiss is not an affirmative act necessary to
8 overcome the voluntary-involuntary rule's bar to removal."); *Chaudhary v. Atria Mgmt. Co., LLC*,
9 No. 23-cv-01419, 2023 WL 5596040, at *4 (D.N.J. Aug. 11, 2023), *recommendation adopted*,
10 2023 WL 5578063 (D.N.J. Aug. 29, 2023) ("[P]laintiffs who affirmatively notify the court of their
11 non-opposition to a dismissal are considered to have taken an affirmative act indicative of a
12 voluntary dismissal."); *Farah v. Guardian Ins. & Annuity Co., Inc.*, No. 17-20303, 2017 WL
13 3261604, at *6 (S.D. Fla. Aug. 1, 2017), *recommendation adopted*, 2017 WL 7794278 (S.D. Fla.
14 Aug. 15, 2017) (finding that plaintiff's concession to the granting of a dispositive motion by the
15 non-diverse defendant was not "the functional equivalent of a voluntary dismissal [...] if such a
16 concession were to be deemed a 'voluntary act' that created diversity jurisdiction, then parties
17 would feel pressured to fruitlessly oppose meritorious motions just to avoid removal").

18 **V. REQUEST FOR ATTORNEYS' FEES AND SANCTIONS**

19 Plaintiffs request that the Court award them attorneys' fees and costs and impose Rule 11
20 sanctions on MPI for removing the case "without merit" and misrepresenting "case law as well as
21 the procedural history of this matter" to support their position. ECF Nos. 21 at 11; 23 at 9-10.

22 "Absent unusual circumstances, a court may award costs and attorneys' fees under 28
23 U.S.C. § 1447(c) 'only where the removing party lacked an objectively reasonable basis for
24 seeking removal.'" *Torres v. Honeywell, Inc.*, 2021 WL 259439, at *3 (citing *Martin v. Franklin*
25 *Capital Corp.*, 546 U.S. 132, 141 (2005)). Following *Martin v. Franklin Capital*, an award of
26 attorneys' fees is only appropriate if MPI "lacked an objectively reasonable basis for seeking
27 removal." *Id.* Although the Court finds MPI's arguments for removal unavailing, they are not
28 objectively unreasonable. The Court denies Plaintiffs' request for attorneys' fees and costs. *See*

1 *Lussier v. Dollar Tree Stores, Inc.*, 518 F.3d 1062, 1065 (9th Cir. 2008) (“[R]emoval is not
2 objectively unreasonable solely because the removing party's arguments lack merit, or else
3 attorney's fees would always be awarded whenever remand is granted.”); *Craig v. Universum
4 Commc'ns*, 2020 WL 4590597, at *5 (denying request for attorneys' fees where defendant's
5 arguments for removal, although unsuccessful, were not “frivolous”).

6 The Court likewise denies Plaintiffs' request for sanctions. “Rule 11 is an extraordinary
7 remedy, one to be exercised with extreme caution.” *Operating Eng'r's Pension Tr. v. A-C Co.*, 859
8 F.2d 1336, 1345 (9th Cir. 1988). It is not warranted here. Although MPI did not demonstrate that
9 Plaintiffs acted in bad faith, its arguments were not frivolous, particularly as the Ninth Circuit has
10 not defined “the applicable standard for bad faith under § 1446(c)(1).” *Torres v. Honeywell*, 2021
11 WL 259439, at * 2. And while the Court did not rule on the voluntary-involuntary issue, MPI's
12 argument that Plaintiffs' filing a statement of non-opposition constitutes a voluntary act is a
13 reasonable interpretation of existing law and one that other district courts have adopted. *See*
14 *Chaudhary v. Atria Mgmt.*, 2023 WL 5596040, at *4 (“[P]laintiffs who affirmatively notify the
15 court of their non-opposition to a dismissal are considered to have taken an affirmative act
16 indicative of a voluntary dismissal.”); *Hammons v. Ohio Cas. Ins. Co.*, Civil Action No. 09-30,
17 2009 WL 997098, at *1-2 (E.D. Ky. Apr. 14, 2009) (“An agreed order constitutes voluntary
18 dismissal.”); *Davidson v. Advoc. Mines, Ltd.*, No. Civil Action No. 11-1013, 2011 WL 13238694,
19 at *2 (E.D. La. June 20, 2011) (finding that removal was proper where “the plaintiff agreed to the
20 dismissal of the last non-diverse party”).

21 **VI. CONCLUSION**

22 For the foregoing reasons, Plaintiffs' Motion for Remand is GRANTED. Plaintiffs' request
23 for attorneys' fees and costs is DENIED. Plaintiffs' request that the Court impose Rule 11
24 sanctions is DENIED.

25 **IT IS SO ORDERED.**

26 Dated: January 15, 2025

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LISA J. CISNEROS
United States Magistrate Judge